

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JUAN MARTINEZ, JOSE PIMENTAL, CARLOS
CONTRERAS, EFRAIN REYES, and
JOWANY CASTILLO

Plaintiff,

-against-

FELIKS & SON STORAGE TANK CORP.,
FELIKS & SON SERVICES, LLC, and FELIKS
SWIERZEWSKI

Defendants.

**Affidavit of Feliks
Swierzewski in Support of
Motion to Vacate Default**

Case No. 0:21-cv-03613
(GRB) (JMW)

I, FELIKS SWIERZEWSKI, being duly sworn, deposes and says:

1. I am a defendant in the above captioned action, and as such, I am familiar with the facts and circumstances relating to plaintiffs' claims.

2. I respectfully submit this affidavit in support of the Motion to Vacate the Default Judgment entered by the Clerk of the Court on January 14, 2022.

3. I am the owner of Feliks & Son Storage Tank Corp. and Feliks & Son Services, LLC.

4. Feliks & Son Storage Tank Corp. is a domestic corporation organized under the laws of New York.

5. Feliks & Son Services, LLC is a limited liability company organized under the laws of New York.

6. For the years 2021 and 2022, the principal place of business of Feliks & Son Storage Tank Corp. and Feliks & Son Services, LLC was 142 Fairview Blvd, Hempstead, NY 11550.

7. Feliks & Son Storage Tank Corp. is engaged in the business of gasoline tank system installation.

8. At all times relevant herein, all employees were employed by Feliks & Son Storage Tank Corp., not Feliks & Son Services, LLC.

9. Feliks & Son Services, LLC has no employees and generates less than \$500,000 in revenue annually.

10. On June 25, 2021, plaintiffs filed a lawsuit against Feliks & Son Storage Tank Corp., Feliks & Son Services, LLC, and me individually, alleging claims of violations of the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”).

11. The Summons and Complaint in this matter were not served on me, and I did not learn until several months later that the Summons and Complaint were erroneously sent to my prior home address of 191 Tulip Ave, Floral Park, New York, 11001.

12. 191 Tulip Ave, Floral Park, New York, 11001 has not been the principal place of business for Feliks & Son Storage Tank Corp. and Feliks & Son Services, LLC since 2018. I (mistakenly) believed that our outside accountant changed the address with the New York Secretary of State at the same time it changed the address for all tax filings.

13. Because the principal place of business has been at 142 Fairview Blvd since 2018, I no longer receive mail forwarding from the 191 Tulip Ave address. As such, I was unaware of the Summons and Complaint until a secretary from the Episcopal Church nearby alerted me to the fact that I had a stack of mail that had been sent to the old address.

14. Several of the plaintiffs, including Juan Martinez, knew of my new address because they visited my new home at 142 Fairview Blvd, Hempstead, NY 11550.

15. Delay in answering or filing any response to the Summons and Complaint was inadvertent and in no way willful.

16. Upon learning about the instant lawsuit and after receiving the Summons and Complaint, I took prompt action and immediately notified and engaged with counsel.

17. Additionally, as the owner of Feliks & Son Storage Tank Corp., I am in possession of true and accurate copies of payroll records from the company. These records highlight the days and hours that plaintiffs worked and contradict plaintiffs' allegations.

18. For example, the excerpts of the attached 2016 records specifically display the days and hours that plaintiff Efrain Reyes worked.

19. These records are a true and accurate reflection of the hours worked and directly conflict with the hours plaintiffs claim damages for in their Complaint and Memorandum of Law in Support of the Motion for Default.

20. Additionally, if there were times when my employees needed a day off for any reason, they would send me a text message and I would approve it without issue. As a result, plaintiffs received much more than the alleged one week off per year.

21. Finally, we did not work past 4:30 p.m. with typical hours consisting of 8 am to 4:30 pm with 30-minutes break for lunch. The submitted paperwork shows that they were paid based on an 8-hour day. Their daily pay rate was divided by 8 hours to get an hourly rate, and if plaintiffs worked a partial day, this hourly rate was then multiplied by the number of hours worked.

Dated: ~~June~~ ^{JULY} ~~6th~~, 2022

Feliks Swierzewski

Feliks Swierzewski

Sworn to before me this

6th day of July, 2022.

Notary Public St. Garbowski

